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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA
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9 Madison Power, a minor, by and through)
10 Kelly and Lisa Power, her parents and)
guardians,

11 Plaintiff,

12 vs.

13 Gilbert Public Schools, *et al.*,

14 Defendants.
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No. CV 07-2584-PHX-JAT

ORDER

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20 The Court's Order of May 16, 2008, among other things, dismissed Plaintiff's §1983
21 claims for violation of her equal protection rights. (Doc. #34, p. 6). The Court held that Title
22 IX preempted Plaintiff's equal protection claims against the school officials and the school
23 district for gender discrimination. The United States Supreme Court has since held that Title
24 IX does not preempt §1983 claims for Equal Protection Clause violations. *Fitzgerald v.*
25 *Barnstable School Comm.*, ___ U.S. ___, 129 S.Ct. 788, 797 (2009) ("Accordingly, we hold
26 that §1983 suits based on the Equal Protection Clause remain available to plaintiffs alleging
27 unconstitutional gender discrimination in schools.").

28 In light of the Supreme Court's opinion in *Fitzgerald*, on January 27, 2009, the Court

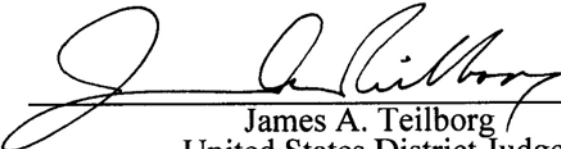
1 invited Plaintiff to file a motion to reconsider the Court's earlier Order. (Doc. #65). Plaintiff
2 filed her Motion for Reconsideration (Doc. #68) on February 27, 2009. Plaintiff asks that
3 the Court reconsider its ruling that Title IX preempts Equal Protection claims under §1983.
4 Defendants filed a response, but do not disagree with Plaintiff that that portion of the Court's
5 earlier Order is incorrect. Because of the Supreme Court's intervening holding in *Fitzgerald*,
6 the Court will grant the motion to reconsider to the extent requested.

7 Accordingly,

8 IT IS ORDERED GRANTING Plaintiff's Motion for Reconsideration (Doc. #68) to
9 the limited extent that the Court reverses its earlier holding regarding her §1983 Equal
10 Protection claims. Plaintiff's §1983 Equal Protection claims are not preempted by Title IX
11 and therefore should not be dismissed.

12 DATED this 30th day of March, 2009.

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James A. Teilborg
United States District Judge